AOSE ADVISORY COMMITTEE

MEETING MINUTES:

April 19, 2007

On April 19, 2007, the AOSE Advisory Committee met in the Fifth Floor Conference room of the Office of Environmental Health Services, 109 Governor Street, Richmond, Virginia 23219. The following committee members attended in person or via polycom:

- Dan Horne, Virginia Department of Health
- David Fridley, Virginia Department of Health
- Pam Pruett, AOSE;
- Neal Spiers, AOSE, CPSS;
- Dwayne Roadcap, Facilitator, VDH-Division of Onsite Sewage & Water Services; and

The following committee members were not present:

- Curtis H. Moore, AOSE, CPSS;
- Stuart McKenzie, local government
- Chip Dunn, P.E., AOSE
- Phil Dunn, AOSE;
- Andre Fontaine, P.E., Real Estate Agent;
- Ray Wilson, contractor
- Frances Wright, contractor
- VACANT POSITION: VDH
- VACANT POSITION: VDH
- VACANT POSITION: SURVEYOR

Handouts for the meeting included the following:

1. Meeting agenda;
2. Future Discussion Topics

Committee Purpose: The Advisory Committee makes recommendations to the Commissioner of Health on policy, procedures, and regulations for the Authorized Onsite Soil Evaluator (AOSE) program. The committee's discussion and recommendations are only limited by what the Committee wishes to address. Committee members and stakeholders may attend meetings via remote locations through the health department's video-conferencing system.

Committee Decisions: The committee reaches all decisions using a "full-consensus" mechanism, meaning that all members in attendance must agree before a recommendation is sent to the Commissioner. Members who do not attend a meeting are expected to support their fellow members on decisions reached in their absence.

Ground rules:

1. Respect all views and welcome new ideas.
2. Participate, be candid, and avoid personal attacks.
3. Be respectful when you have the floor. Keep comments pithy and concise. Limit speaking time to assure that all members have an opportunity to be heard.
4. Listen for new understandings and offer new perspectives.
5. Focus on agenda and topic. Assist facilitator and chairperson in keeping the discussion focused and on topic.
6. Avoid "side bar" conversations and hidden criticism.

The Committee will seek non-committee input on an as-needed basis. The facilitator or chair person may recognize a non-member.

Old Business:

1. E.L. Hamm report: The Committee asked that Roadcap categorize E.L. Hamm's recommendations so that they could be reviewed for input at a later date.
2. Cover Page for AOSE reports: Roadcap reported that the cover page should be ready for the Commissioner's review within a couple of weeks. He anticipated that GMP #126 would be modified soon.
3. Update on Onsite Sewage Regulations: Roadcap noted that VDH continued to evaluate changes to the onsite sewage regulations and that legislation passed in the 2007 General Assembly would require regulation to implement.
4. Vertical Separation to a restriction using proprietary, pre-engineered system: Roadcap noted that VDH was continuing to evaluate why their were implementation differences among districts and hoped that VDH would respond to the issue soon.
5. Legislation: The committee briefly heard overviews of HB 1801, HB1949, HB 1950, HB 1951, HB 2102, HB 2182, HB 2323, HB 2691, HB 2692, HB 2791, HB 2950, HB 3134, SB 1215, and SB 1270.

Committee Discussion and Recommendations:

HB3134 and SB1270 removes the term AOSE from Title 32.1-163 of the Code and replaces it with the regulant, Licensed Onsite Soil Evaluator ("LSE"). Under Title 54.1-2301, HB3134 required the Department of Professional and Occupational Regulation (DPOR), Board for Waterworks and Wastewater Works Operators (the "Board"), to establish a program for licensing persons as LSEs, sewage system installers, and sewage system operators. The Board's program is to establish regulations for the licensure of LSEs, installers, and operators, which would include the minimum knowledge, skills and abilities to obtain licensure. The legislation required DPOR's Board be altered to include woulAn enactment clause makes the legislation effective on July 1, 2009.

David Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, Department of Professional and Occupation Regulation (DPOR) was a guest attendee. Dick provided his contact information as follows: David.Dick@dpor.virginia.gov, www.dpor.virginia.gov/dporweb/www_main.cfm. Dick's phone number is 804-367-8595.

Dick stated that he would be working with the Board to change its membership and begin developing regulations as the legislation required. Dick stated that the next board meeting was scheduled for Wednesday, June 20, 2007 on the 4th Floor at 3600 West Broad Street and he invited all interested stakeholders. He reminded members that all meetings were posted at www.townhall.virginia.gov.

Dick noted that gubernatorial appointments to the Board would happen and that he anticipated the Board would set up a subcommittee, composed of at least one Board member, to make recommendations to the Board to establish the programs required by HB3134 and SB1270. He stated that the Board meets quarterly but could add new meetings if necessary. Once the Board developed its ideas for establishing a program, then the Board would publish a Notice of Intended Regulatory Action (NOIRA) and solicit public input. Dick stated that he hoped the Board could accomplish most its work by January 2008 but until the Board started working on these issues, he could not be certain of anything. He was giving his best guess of what he thought might happen.

One person asked for Dick's opinion about those people who held both the AOSE and Certified Professional Soil Scientist (CPSS) credential. Would DPOR combine the AOSE and CPSS credential into one license? Would the Board grandfather AOSEs as LSEs? Dick stated that the CPSS credential was a voluntary certification and that he did not believe DPOR had any intention of combining the CPSS certification and LSE license. He did not know how the Board might handle transfer of the AOSE certification. He hoped that the Board's regulations for LSEs would not have higher KSA standards than what VDH required of AOSEs. He reminded the group that regulations and licensure requirements set a minimum standard

One person noted that E.L. Hamm, the company that evaluated the health department's business model for the onsite sewage program, had recommended that the AOSE certification be moved to DPOR. Now that this recommendation appeared to be a reality, AOSEs would need to make sure that they were involved in the DPOR's process to regulate LSEs. The person wondered how the VDH's implementation policy for the AOSEs regulations would change since VDH would no longer have AOSE regulations. How would VDH keep the work submitted from LSEs standardized once DPOR had control of the program? Another person noted that the AOSE Advisory Committee would no longer be required since the regulations were moving to DPOR.

The group asked that David Dick be invited back to the next AOSE Advisory Committee meeting so that the committee could remain informed of what DPOR was planning and doing to implement the legislation.

The committee discussed the problems with designing proprietary, pre-engineered systems (GMP #112, #114, and #118). Several people thought that it was unclear what exceptions, exemptions, or variances from the regulations were being granted in each policy. As a result, it seemed like different districts were implementing the policies differently and seemed to pick and choose which rules from the regulations applied and which ones did not. For example, with the vertical separation distance issue to a restriction, it was unclear whether the regulations applied or not. Some districts stated that there was an 18-inch separation for shallow placed systems and a 12-inch separation for in-ground systems (the policies did not provide an exemption to that requirement of the regulations). On the other hand, other districts were saying that the policies provided an exemption to the regulations for vertical separation to a restriction—perhaps as shallow as 6-inches depending on percolation rate--because the policies included a chart that discussed separation distances to limiting factors. Another person noted that some districts placed other nuances into the decision mix. For example, one policy had a chart that described separation distances to a limiting feature while another policy indicated that there was a separation distance to watertable. As a result, some stakeholders thought that there were different separation standards depending on the treatment device used.

The committee discussed that implementation of GMP #112, #114, and #118 could be improved by answering the following questions:

1. What is the vertical separation distance to a restriction?
2. Is an engineer required to design one?
3. Are trenches possible if systems installed less than 12-inches deep in Texture Group III/IV soils?
4. What is the separation distance between multiple pads?
5. How do you size drip? Can an AOSE design drip?
6. Is time dosing with gravity flow trenches possible?
7. What does “per pad” mean?
8. What does a pad look like? How do you design a pad?
9. Does the minimum installation depth increase on sloping sites for pads and trenches?
10. What are the design criteria for installing pads on steep slopes?
11. Can gravellous substitutes be installed under the policies and also be combined for an additional reduction?
12. Does an Ecoflo with a 1,000 gallon pump station require an engineer?

The committee discussed the apparent barriers to resolving the above questions. One idea to solve the problem was for the VDH to rescind the policies and re-write one new policy with a list of approved manufacturers under it (sort of like how GMP #116

worked). Another person stated that the manufacturers needed to develop design manuals that answered the questions. Another school of thought was that all pad designs required engineering so an engineering standard needed to be set. Given that stakeholders could not remember what data the manufacturers had tested and submitted; maybe VDH could put that information on the website with each policy so that everyone knew what the data was.

As the group discussed the idea of placing information on the web, one person asked why certain variances were not placed on the web. They had heard of a variance to Delta, which Delta was advertising but he had not seen anything about it on VDH's website. Another person noted that an engineer had gotten a variance for a special design but no one could find that information on the web. The group liked the idea of open government and that VDH should start putting more information and data on its website. The group liked the idea of placing appeal decisions, consent orders (like DEQ does) and the variance decisions on the web.

The committee discussed as-built drawings. Roadcap mentioned that an AOSE reported a problem with submitting as-built drawings. The AOSE reported that one health district was requiring that all as-built drawings be survey located and that the health district was using the as-built drawing for quality review. If the survey did not coincide with the AOSE's permit package, then the health district asked the AOSE to submit additional soil work.

The AOSE felt that the health district was not using as-built drawings appropriately. From his perspective, the as-built drawing was a tool for locating components in the future. You did not need a survey to locate components; measurements from property corners or house corners were sufficient. The AOSE thought that the only time a survey location might be necessary is for a system that was in a remote location far away from the house.

Committee members felt that survey-located as-built drawings were generally unnecessary and that if a particular health district were requiring surveys for as-builts, then VDH should intervene to stop that practice. If the health district was getting poor as-built drawings and was requiring surveys to combat the problem, then the health district should work with stakeholders to improve quality but not require surveys that added an unnecessary cost. Some noted that very few systems are ever installed exactly as shown by the construction permit. The AOSE signs off on the inspection after evaluating whether the construction changes were substantive or not. Another person stated that they have received as-built drawings from surveyors that were not correct because the surveyor did not know what he was locating. The surveyor would mark a pump chamber riser as a water supply. Other times, the surveyor would mark lawn irrigation equipment (control boxes) instead of the sewage system components. All committee members agreed that the health district, if it were requiring survey located as-builts, had no authority to do it.

On another topic, the committee discussed a hypothetical problem where AOSE #1 complains to the local health department that AOSE #2 submitted bad work. AOSE #1 says, "watch out, that system's going to fail". How should the health department respond? Should they always go perform a Level 2 review or should they accept AOSE #2's certification and only do a Level 2 if it falls within their normal routine of review? AOSEs may disagree, or have different thresholds of tolerance.

For all complaints, VDH has the following options:

1. Do Level 2.
2. Investigate according to the level of information.
3. Don't do Level 2 (for this option, one person suggested here is where the worst case scenario develops: system fails, get indemnification request, staff read file, there is a note in file that conversation occurred with AOSE #2 and it was ignored it—what's the court of public opinion say?)

People responded as follows: ignoring the complaint won't be the cause of failure. Do you have to report every soil profile that is evaluated? The consensus opinion was that it is too much to regulate that every soil profile be documented. There must be a professional standard for the industry; investigating an AOSE because of a complaint is not public health. On Level 2 review, VDH staff will not always agree with the AOSE. At any point, the VDH can revoke an approval.

Is VDH obligated to do a Level 2? No, it is not. As any other complaint, VDH should go check it out. What if AOSE was ill respected? How would VDH perform its 10% review? VDH would probably be doing 100% review of AOSE if it had suspicions that the AOSE's work was not usually correct. If you are ready to do a Level 2, then go ahead. VDH has to evaluate motives, history, parties involved. While it has no obligation to do something, it is still the professional's work, his name and reputation on the line so VDH should follow-up. What if a citizen complains? How would a citizen know? What happens if EHS A disagrees with EHS B?

The default response is that VDH should do the Level 2 review when it receives a complaint about an AOSE's work. At the same time, VDH has discretion so staff need to evaluate all of the facts and complexity of the situation. There may be reason not to do a Level 2 but VDH needs a good reason for not doing the Level 2.

One person noted that maybe DPOR, when it starts to license LSEs that the Board could require bonding, liability insurance, contracts, or create a special fund like it does for the contractor's board. DPOR will likely have a different approach to enforcement, regulation development than VDH will.